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NOTIFICATION.

LA4-117/1955.

The following Bill together with the Statement of Objects and Reasons and the Financial Memorandum attached to it, is published, as ordered by the Speaker under Rule 73 of the Rules of Procedure and Conduct of Business in the Travancore-Cochin Legislative Assembly.

Legislature Secretariat,
Trivandrum,
29th January, 1955.

V. KRISHNAMOORTHI,
Secretary, Legislative Assembly.

The Travancore-Cochin Insolvency Bill.

His Highness the Rajpramukh has recommended the consideration and passing of this Bill by the Assembly under Article 207 (3) of the Constitution.

V. KRISHNAMOORTHI,
Secretary, Legislative Assembly

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33-296 B

THE TRAVANCORE-COCHIN INSOLVENCY BILL.

A Bill to consolidate and amend the law relating to insolvency.

Preamble. Whereas it is expedient to consolidate and amend the law relating to insolvency;

Be it enacted in the Sixth Year of the Republic of India as follows: —

1. **Short title, extent and commencement.** (1) This Act may be called the Travancore-Cochin Insolvency Act, 1955.

(2) It extends to the whole of the State of Travancore-Cochin.

(3) It shall come into force on such date as the Government may, by notification in the Gazette, appoint.

2. **Definitions.** (1) In this Act, unless the context otherwise requires,—

(*a*) "Collector" means the Chief Officer in charge of the revenue admininstration of the district and includes an acting or officiating Collector and also any officer appointed by the Government to exercise the functions of the Collector;

(*b*) "Creditor" includes a decree-holder, "debt" includes a judgment-debt, and "debtor" includes a judgment-debtor;

(*c*) "District Court" means the Principal Civil Court of original jurisdiction;

(*d*) "prescribed" means prescribed by rules made under this Act;

(*e*) "property" includes any property over which or the profits of which any person has a disposing power which he may exercise for his own benefit;

(*f*) "secured creditor" means a person holding a mortgage, charge or lien on the property of the debtor or any part thereof as a security for a debt due to him from the debtor;

(*g*) "State" means the State of Travancore-Cochin; and

(*h*) "transfer of property" includes a transfer of any interest in property and the creation of any charge upon property.

(2) Words and expressions used in this Act and defined in the Code of Civil Procedure, 1908, and not hereinbefore defined shall have the same meanings as those respectively attributed to them by the said Code.

PART I.

CONSTITUTION AND POWERS OF COURT.

3. **Insolvency Jurisdiction.** The District Courts shall be the Courts having jurisdiction under this Act:

Provided that the Government may, by notification in the Gazette, invest any Court subordinate to a District Court with

jurisdiction in any class of cases, and any Court so invested shall within the local limits of its jurisdiction have concurrent jurisdiction with the District Court under this Act.

4. **Power of Court to decide all questions arising in insolvency** (1) Subject to the provisions of this Act, the Court shall have full power to decide all question whether of title or priority, or of any nature whatsoever, and whether involving matters of law or of fact, which may arise in any case of insolvency coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.

(2) Subject to the provisions of this Act and notwithstanding anything contained in any other law for the time being in force, every such decision shall be final and binding for all purposes as between, on the one hand, the debtor and the debtor's estate and, on the other hand, all claimants against him or it and all persons claiming through or under them or any of them.

(3) Where the Court does not deem it expedient or necessary to decide any question of the nature referred to in sub-section (1), but has reason to belive that the debtor has a saleable interest in any property the Court may without further inquiry sell such interest in such manner and subject to such conditions as it may think fit.

5. **General powers of Courts.** (1) Subject to the provision of this Act, the Court, in regard to proceedings under this Act, shall have the same powers and shall follow the same procedure as it has and follows in the exercise of original civil jurisdiction.

(2) Subject as aforesaid, the High Court and the District Courts, in regard to proceedings under this Act in Courts subordinate to them, shall have the same powers and shall follow the same procedure as they respectively have and follow in regard to civil suits.

PART II.

Proceedings from Act of Insolvency to Discharge.

Act of Insolvency.

6. **Acts of Insolvency.** A debtor commits an act of insolvency in each of the following cases, namely :—

(*a*) if, he makes a transfer of all of substantially all his property to a third person for the benefit of his creditors generally ;

(*b*) if, he makes a transfer of his property or of any part there of with intent to defeat or delay his creditors ;

(c) if, he makes any transfer of his property or of any part thereof, which would, under this or any other enactment for the time being in force, be void as fraudulent preference if he were adjudged an insolvent;

(*d*) if, with intent to defeat or delay his creditors,—

(i) he departs or remains out of the State,

(ii) he departs from his dwelling-house or usual place of business or otherwise absents himself,

(iii) he secludes himself so as to deprive his creditors of the means of communicating with him;

(*e*) if any of his property has been sold in execution of the decree of any Court for the payment of money;

(*f*) if he petitions to be adjudged an insolvent under the provisions of this Act;

(*g*) if he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts; or

(*h*) if he is imprisoned in execution of the decree of any Court for the payment of money.

Explanation. For the purposes of this section the act of an agent may be the act of the principal.

PETITION.

7. **Petition and adjudication.** Subject to the conditions specified in this Act, if a debtor commits an act of insolvency, an insolvency petition may be presented either by a creditor or by the debtor, and the Court may on such petition make an order (hereinafter called an order of adjudication) adjudging him an insolvent.

Explanation. The presentation of a petition by the debtor shall be deemed an act of insolvency within the meaning of this section, and on such petition the Court may make an order of adjudication.

8. **Exemption of corporation etc., from insolvency proceedings.** No insolvency petition shall be presented against any corporation or against any association or company registered under any enactment for the time being in force.

9 **Conditions on which creditor may petition.** (1) A creditor shall not be entitled to present an insolvency petition against a debtor unless—

(*a*) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and

(*b*) the debt is a liquidated sum payable either immediately or at some certain future time, and

(c) the act of insolvency on which the petition is grounded has occurred within three months before the presenation of the petition:

Provided that where the said period of three months referred to in clause (c) expires on a day when the Court is closed, the insolvency petition may be presented on the day on which the Court re-opens.

(2) If the petitioning creditor is a secured creditor he shall in his petition either state that he is willing to relinquish his security for the benefit of the creditors in the event of the debtor being adjudged insolvent, or give an estimate of the value of the security. In the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor.

10. **Conditions on which debtor may petition.** (1) A debtor shall not be entitled to present an insolvency petition, unless he is unable to pay his debts ; and

(a) his debts amount to five hundred rupees ; or

(b) he is under arrest or imprisonment in execution of the decree of any Court for the payment of money ; or

(c) an order of attachment in execution of such a decree has been made, and is subsisting, against his property.

(2) A debtor in respect of whom an order of adjudication made under this Act has been annulled, owing to his failure to apply, or to prosecute an application for his discharge, shall not be entitled to present an insolvency petition without the leave of the Court by which the order of adjudication was annulled. Such Court shall not grant leave unless it is satisfied either that the debtor was prevented by any reasonable cause from presenting or prosecuting his application, as the case may be or that the petition is founded on facts substantially different from those contained in the petition on which the order of adjudication was made.

11. **Court to which petition shall be presented.** Every insolvency petition shall be presented to a Court having jurisdiction under this Act in any local area in which the debtor ordinarily resides or carries on business, or personally works for gain, or if he has been arrested or imprisoned, where he is in custody :

Provided that no objection as to the place of presentment shall be allowed by any Court in the exercise of appellate or revisional jurisdiction unless such objection was taken in the Court by which the petition was heard at the earliest possible opportunity, and unless there has been a consequent failure or justice.

12. **Verification of petition.** Every insolvency petitinn shall be in writing and shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908, for signing and verifying plaints.

13. **Contents of petition.** (1) Every insolvency petition presented by a debtor shall contain the following particulars namely:—

(*a*) a statement that the debtor is unable to pay his debts;

(*b*) the place where he ordinarily resides or carries on business or personally works for gain, or if he has been arrested or imprisoned, the place where he is in custody;

(*c*) the Court (if any) by whose order he has been arrested or imprisoned, or by which an order has been made for the attachment of his property, together with particulars of the decree in respect of which any such order has been made;

(*d*) the amount and particulars of all pecuniary claims against him, together with the names and residences of his creditors so far as they are known to, or can by the exercise of reasonable care and diligence be ascertained by him;

(*e*) the amount and particulars of all his property, together with—

(i) a specification of the value of all such property not consisting of money;

(ii) the place or places at which any such property is to be found; and

(iii) a declaration of his willingness to place at the disposal of the Court all such property save in so far as it includes such particulars (not being his books of account) as are exempted by the Code of Civil Procedure, 1908, or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree;

(*f*) a statement whether the debtor has on any previous occasion filed a petition to be adjudged an insolvent, and (where such a petition has been filed)—

(i) if such petition has been dismissed, the reasons for such dismissal; or

(ii) if the debtor has been adjudged an insolvent, concise particulars of the insolvency, including a statement whether any previous adjudication has been annulled and, if so, the grounds therefor.

(2) Every insolvency petition presented by a creditor or creditors shall set forth the particulars regarding the debtor specified in clause (b) of sub-section (1) and shall also specify—

(*a*) the act of insolvency committed by such debtor together with the date of its commission; and

(*b*) the amount and particulars of his or their pecuniary claim or claims against such debtor.

14. **Withdrawal of petitions.** No petition, whether presented by a debtor or by a creditor, shall be withdrawn without the leave of the Court.

15. **Consolidation of petitions.** Where two or more insolvency petitions are presented against the same debtor, or where separate petitions are presented against joint debtors, the Court may consolidate the proceedings or any of them, on such terms as the Court thinks fit.

16. **Power to change carriage of proceedings.** Where the petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Act in the case of a petitioning creditor.

17. **Continuance of proceedings on death of debtor.** If a debtor by or against whom an insolvency petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued so far as may be necessary for the realisation and distribution of the property of the debtor.

18. **Procedure for admission of petition.** The procedure laid down in the Code of Civil Procedure, 1908, with respect to the admission of plaints, shall, so far as it is applicable, be followed in the case of insolvency petitions.

19. **Procedure on admission of petition.** (1) Where an insolvency petition is admitted, the Court shall make an order fixing a date for hearing the petition.

(2) Notice of the order under sub-section (1) shall be given to creditors in such manner as may be prescribed.

(3) Where the debtor is not the petitioner, notice of the order under sub-section (1) shall be served on him in the manner provided for the service of summons.

20. **Appointment of interim receiver.** The Court when making an order admitting the petition may, and where the debtor is the petitioner ordinarily shall, appoint an interim receiver of the property of the debtor or of any part thereof, and may direct him to take immediate possession thereof or of any part thereof, and the interim receiver shall thereupon have such of the powers conferable on a receiver appointed under the Code of Civil Procedure, 1908, as the Court may direct. If an interim receiver is not so appointed, the Court may make such appointment at any subsequent time before adjudication, and the provisions of this section shall apply accordingly.

21. **Interim proceedings against debtor.** At the time of making an order admitting the petition or at any subsequent time before adjudication the Court may either of its own motion or on the application of any creditor make one or more of the following orders, namely:—

(1) order the debtor to give reasonable security for his appearance until final orders are made upon the petition, and direct that, in default of giving such security, he shall be detained in the civil prison ;

(2) order the attachment by actual seizure of the whole or any part of the property in the possession or under the control of the debtor, other than such particulars (not being his books of account) as are exempted by the Code of Civil Procedure, 1908, or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree ;

(3) order a warrant to issue with or without bail for the arrest of the debtor, and direct either that he be detained in the civil prison until the disposal of the petition, or that he be released on such terms as to security as may be reasonable and necessary:

Provided that an order under clause (2) or clause (3) shall not be made unless the Court is satisfied that the debtor, with intent to defeat or delay his creditors or to avoid any process of the Court,—

(i) has absconded or has departed from the local limits of the jurisdiction of the Court, or is about to abscond or to depart from such limits, or is remaining outside them, or

(ii) has failed to disclose or has concealed, destroyed, transferred or removed from such limits, or is about to conceal, destroy, transfer or remove from such limits, any documents likely to be of use to his creditors in the course of the hearing, or any part of his property other than such particulars as aforesaid.

22. **Duties of debtors.** The debtor shall on the making of an order admitting the petition produce all books of account, and shall at any time thereafter give such inventories of his property, and such lists of his creditors and debtors and of the debts due to and from them, respectively, submit to such examination in respect of his property or his creditors, attend at such times before the Court or receiver, execute such instruments, and generally do all such acts and things in relation to his property as may be required by the Court or receiver, or as may be prescribed.

23. **Release of debtors.** (1) At the time of making an order admitting the petition or at any subsequent time before adjudication, the Court may, if the debtor is under arrest or imprisonment in execution of the decree of any Court for the payment of money, order his release on such terms as to security as may be reasonable and necessary.

(2) The Court may at any time order any person who has been released under this section to be re-arrested and recommitted to the custody from which he was released.

(3) At the time of making any order under this section, the Court shall record in writing its reasons therefor.

14. **Withdrawal of petitions.** No petition, whether presented by a debtor or by a creditor, shall be withdrawn without the leave of the Court.

15. **Consolidation of petitions.** Where two or more insolvency petitions are presented against the same debtor, or where separate petitions are presented against joint debtors, the Court may consolidate the proceedings or any of them, on such terms as the Court thinks fit.

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21. **Interim proceedings against debtor.** At the time of making an order admitting the petition or at any subsequent time before adjudication the Court may either of its own motion or on the application of any creditor make one or more of the following orders, namely:—

(1) order the debtor to give reasonable security for his appearance until final orders are made upon the petition, and direct that, in default of giving such security, he shall be detained in the civil prison ;

(2) order the attachment by actual seizure of the whole or any part of the property in the possession or under the control of the debtor, other than such particulars (not being his books of account) as are exempted by the Code of Civil Procedure, 1908, or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree ;

(3) order a warrant to issue with or without bail for the arrest of the debtor, and direct either that he be detained in the civil prison until the disposal of the petition, or that he be released on such terms as to security as may be reasonable and necessary:

Provided that an order under clause (2) or clause (3) shall not be made unless the Court is satisfied that the debtor, with intent to defeat or delay his creditors or to avoid any process of the Court,—

(i) has absconded or has departed from the local limits of the jurisdiction of the Court, or is about to abscond or to depart from such limits, or is remaining outside them, or

(ii) has failed to disclose or has concealed, destroyed, transferred or removed from such limits, or is about to conceal, destroy, transfer or remove from such limits, any documents likely to be of use to his creditors in the course of the hearing, or any part of his property other than such particulars as aforesaid.

22. **Duties of debtors.** The debtor shall on the making of an order admitting the petition produce all books of account, and shall at any time thereafter give such inventories of his property, and such lists of his creditors and debtors and of the debts due to and from them, respectively, submit to such examination in respect of his property or his creditors, attend at such times before the Court or receiver, execute such instruments, and generally do all such acts and things in relation to his property as may be required by the Court or receiver, or as may be prescribed.

23. **Release of debtors.** (1) At the time of making an order admitting the petition or at any subsequent time before adjudication, the Court may, if the debtor is under arrest or imprisonment in execution of the decree of any Court for the payment of money, order his release on such terms as to security as may be reasonable and necessary.

(2) The Court may at any time order any person who has been released under this section to be re-arrested and recommitted to the custody from which he was released.

(3) At the time of making any order under this section, the Court shall record in writing its reasons therefor.

24. **Procedure at hearing.** (1) On the day fixed for the hearing of the petition, or on any subsequent day to which the hearing may be adjourned, the Court shall require proof of the following matters, namely:—

(*a*) that the creditor or the debtor, as the case may be, is entitled to present the petition:

Provided that, where the debtor is the petitioner, he shall for the purpose of proving his inability to pay his debts, be required to furnish only such proof as to satisfy the Court that there are *prima facie* grounds for believing the same and the Court, if and when so satisfied, shall not be bound to hear any further evidence thereon;

(*b*) that the debtor, if he does not appear on a petition presented by a creditor, has been served with notice of the order admitting the petition; and

(*c*) that the debtor has committed the act of insolvency alleged against him.

(2) The Court shall also examine the debtor, if he is present, as to his conduct, dealings and property in the presence of such creditors as appear at the hearing, and the creditors shall have the right to question the debtor thereon.

(3) The Court shall, if sufficient cause is shown, grant time to the debtor or to any creditor to produce any evidence which appears to it to be necessary for the proper disposal of the petition.

(4) A memorandum of the substance of the examination of the debtor and of any other oral evidence given shall be made by the judge, and shall form part of the record of the case.

25. **Dismissal of petitions.** (1) In the case of a petition presented by a creditor, where the Court is not satisfied with the proof of his right to present the petition or of the service on the debtor of notice of the order admitting the petition, or of the alleged act of insolvency, or is satisfied by the debtor that he is able to pay his debts, or that for any other sufficient cause no order ought to be made, the Court shall dismiss the petition.

(2) In the case of a petition presented by a debtor, the Court shall dismiss the petition if it is not satisfied of his right to present the petition.

26. **Award of compensation.** (1) Where a petition presented by a creditor is dismissed under sub-section (1) of Section 25, and the Court is satisfied that the petition was frivolous or vexatious, the Court may, on the application of the debtor award against such creditor such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the debtor for the expense or injury occasioned to him by the petition and the proceedings thereon, and such amount may be realised as if it were a fine.

(2) An award under this section shall bar any suit for compensation in respect of such petition and the proceedings thereon.

ORDER OF ADJUDICATION.

27. **Order of adjudication.** (1) If the Court does not dismiss the petition, it shall make an order of adjudication, and shall specify in such order the period within which the debtor shall apply for his discharge.

(2) The Court may, if sufficient cause is shown, extend the period within which the debtor shall apply for his discharge, and in that case shall publish notice of the order in such manner as it thinks fit.

28. **Effect of an order of adjudication.** (1) On the making of an order of adjudication, the insolvent shall aid to the utmost of his power in the realisation of his property and the distribution of the proceeds among his creditors.

(2) On the making of an order of adjudication, the whole of the property of the insolvent shall vest in the Court or in a receiver as hereinafter provided, and shall become divisible among the creditors, and thereafter, except as provided by this Act, no creditor to whom the insolvent is indebted in respect of any debt provable under this Act shall during the pendency of the insolvency proceedings have any remedy against the property of the insolvent in respect of the debt, or commence any suit or other legal proceeding, except with the leave of the Court and on such terms as the Court may impose.

(3) For the purpose of sub-section (2), all goods being at the date of the presentation of the petition on which the order is made, in the possession, order or disposition of the insolvent in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof, shall be deemed to be the property of the insolvent.

(4) All property which is acquired by or devolves on the insolvent after the date of an order of adjudication and before his discharge shall forthwith vest in the Court or receiver, and the provisions of sub-section (2) shall apply in respect thereof.

(5) The property of the insolvent for the purposes of this section shall not include any property (not being books of account) which is exempted by the Code of Civil Procedure, 1908, or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree.

(6) Nothing in this section shall affect the power of any secured creditor to realise or otherwise deal with his security, in the same manner as he would have been entitled to realise or deal with it if this section had not been passed.

(7) An order of adjudication shall relate back to, and take effect from, the date of the presentation of the petition on which it is made.

29. **Insolvent's property to comprise certain capacity.** The property of the insolvent shall comprise and shall always be deemed to have comprised also the capacity to exercise and to take proceedings for exercising all such powers in or over or in

respect of property as might have been exercised by the insolvent for his own benefit at the commencement of his insolvency or before his discharge.

30. **Stay of pending proceedings.** Any court in which a suit or other proceeding is pending against a debtor shall, on proof that an order of adjudication has been made against him under this Act, either stay the proceeding, or allow it to continue on such terms as such Court may impose.

31. **Publication of order of adjudication.** Notice of an order of adjudication stating the name, address and description of the insolvent, the date of the adjudication, the period within which the debtor shall apply for his discharge, and the Court by which the adjudication is made, shall be published in the Gazette and in such other manner as may be prescribed.

PROCEEDINGS CONSEQUENT ON ORDER OF ADJUDICATION.

32. **Protection order.** (1) Any insolvent in respect of whom an order of adjudication has been made may apply to the Court for protection, and the Court may on such application make an order for the protection of the insolvent from arrest or detention.

(2) A protection order may apply either to all the debts of the debtor, or to any of them as the Court may think proper, and may commence and take effect at and for such time as the Court may direct, and may be revoked or renewed as the Court may think fit.

(3) A protection order shall protect the insolvent from being arrested or detained in prison for any debt to which such order applies, and any insolvent arrested or detained contrary to the terms of such an order shall be entitled to his release:

Provided that no such order shall operate to prejudice the rights of any creditor in the event of such order being revoked or the adjudication annulled.

(4) Any creditor shall be entitled to appear and oppose the grant of a protection order.

33. **Power to arrest after adjudication.** At any time after an order of adjudication has been made, the Court may, if it has reason to believe on the application of any creditor or the receiver that the debtor has absconded or departed from the local limits of its jurisdiction with intent to avoid any obligation which has been, or might be, imposed on him by or under this Act, order a warrant to issue for his arrest, and on his appearing or being brought before it, may, if satisfied that he was absconding or had departed with such intent, order his release on such terms as to security as may be reasonable or necessary, or, if such security is not furnished, direct that he shall be detained in the civil prison for a period which may extend to three months.

34. **Schedule of creditors.** (1) When an order of adjudication has been made under this Act, all persons alleging themselves to be creditors of the insolvent in respect of debts provable under this Act shall tender proof of their respective debts by producing evidence of the amount and particulars thereof, and the Court shall, by order, determine the persons who have proved themselves to be creditors of the insolvent in respect of such debts, and the amount of such debts, respectively, and shall frame a schedule of such persons and debts:

Provided that, if, in the opinion of the Court, the value of any debt is incapable of being fairly estimated, the Court may make an order to that effect, and thereupon the debt shall not be included in the schedule.

(2) A copy of every such schedule shall be posted in the Court-house.

(3) Any creditor of the insolvent may, at any time before the discharge of the insolvent, tender proof of his debt and apply to the Court for an order directing his name to be entered in the schedule as a creditor in respect of any debt provable under this Act, and not entered in the schedule, and the Court, after causing notice to be served on the Receiver and the other creditors who have proved their debts, and hearing their objections, if any, shall comply with or reject the application.

35. **Debts provable under the Act.** (1) Debts which have been excluded from the schedule on the ground that their value is incapable of being fairly estimated and demands in the nature of unliquidated damages arising otherwise than by reason of a contract or a breach of trust shall not be provable under this Act.

(2) Save as provided by sub-section (1), all debts and liabilities, present or future, certain or contingent, to which the debtor is subject when he is adjudged an insolvent, or to which he may become subject before his discharge by reason of any obligation incurred before the date of such adjudication, shall be deemed to be debts provable under this Act.

ANNULMENT OF ADJUDICATION.

36. **Power to annul adjudication of insolvency.** Where, in the opinion of the Court, a debtor ought not to have been adjudged insolvent, or where it is proved to the satisfaction of the Court that the debts of the insolvent have been paid in full, the Court shall, on the application of the debtor, or of any other person interested, by order in writing, annul the adjudication and the Court may, of its own motion or on application made by the Receiver or any creditor, annul any adjudication made on the petition of a debtor who was, by reason of the provisions of sub-section (2) of Section 10, not entitled to present such petition.

37. **Power to cancel one of concurrent orders of adjudication.** If, in any case in which an order of adjudication has been made, it shall be proved to the Court by which such order was made that insolvency proceedings are pending in another

Court against the same debtor, and that the property of the debtor can be more conveniently distributed by such other Court, the Court may annul the adjudication or stay all proceedings thereon.

38. **Proceedings on annulment**. (1) Where an adjudication is annulled, all sales and dispositions of property and payments duly made, and all acts theretofore done, by the Court or Receiver shall be valid; but, subject as aforesaid, the property of the debtor who was adjudged insolvent shall vest in such person as the Court may appoint, or in default of any such appointment shall revert to the debtor to the extent of his right or interest therein on such conditions, if any as the Court may, by order in writing, declare.

(2) Notice of every order annulling an adjudication shall be published in the Gazette and in such other manner as may be prescribed.

COMPOSITIONS AND SCHEMES OF ARRANGEMENT.

39. **Compositions and schemes of arrangements.** (1) Where a debtor, after the making of an order of adjudication, submits a proposal for a composition in satisfaction of his debts, or a proposal for a scheme of arrangement of his affairs, the Court shall fix a date for the consideration of the proposal, and shall issue a notice to all creditors in such manner as may be prescribed.

(2) If, on the consideration of the proposal, a majority in number and three-fourths in value of all the creditors whose debts are proved and who are present in person or by Pleader, resolve to accept the proposal, the same shall be deemed to be duly accepted by the creditors.

(3) The debtor may at the meeting amend the terms of his proposal if the amendment is, in the opinion of the Court, calculated to benefit the general body of creditors.

(4) Where the Court is of opinion, after hearing the report of the Receiver, if a Receiver has been appointed, and after considering any objections which may be made by or on behalf of any creditor, that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors, the Court shall refuse to approve the proposal.

(5) If any facts are proved on proof of which the Court would be required either to refuse, suspend or attach conditions to the debtor's discharge, the Court shall refuse to approve the proposal unless it provides reasonable security for payment of not less than six annas in the rupee on all the unsecured debts provable against the debtor's estate.

(6) No composition or scheme shall be approved by the Court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of an insolvent.

(7) In any other case the Court may either approve or refuse to approve the proposal.

40. **Order on approval.** If the Court approves the proposal, the terms shall be embodied in an order of the Court, and the order of adjudication shall be annulled, and the provisions of Section 38 shall apply, and the composition or scheme shall be binding on all the creditors so far as relates to any debt due to them from the debtor and provable under this Act.

41. **Power to re-adjudge debtor insolvent.** If default is made in the payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court that the composition or scheme cannot proceed without injustice or undue delay, or that the approval of the Court was obtained by fraud the Court may, if it thinks fit, re-adjudge the debtor insolvent and annul the composition or scheme but without prejudice to the validity of any transfer or payment duly made or of anytbing duly done under or in pursuance of the composition or scheme. Wh en a debtor is re-adjudged insolvent under this section, all debts provable in other respects which have been contracted before the date of such re-adjudication shall be provable in the insolvency.

DISCHARGE.

42. **Discharge.** (1) A debtor may, at any time after the order of adjudication and shall, within eth period specified by the Court, apply to the Court for an order of discharge, and the Court shall fix a day, notice whereof shall be given in such manner as may be prescribed, for bearing such application, and any objections which may be made thereto.

(2) Subject to the provisions of this section, the Court may, after considering the objections of any creditor and, where a receiver has been appointed, the report of the receiver—

(*a*) grant or refuse an absolute order of discharge; or

(*b*) suspend the operation of the order for a specified time; or

(*c*) grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the insolvent, or with respect to his after-acquired property.

43. **Cases in which Court must refuse an absolute discharge.** (1) The Court shall refuse to grant an absolute order of discharge under Section 42 on proof of any of the following facts namely: —

(*a*) that the insolvent's assets are not of a value equal to eight annas in the rupee on the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of a value equal to eight annas in the rupee on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible;

(*b*) that the insolvent has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his insolvency;

(c) that the insolvent has continued to trade after knowing himself to be insolvent;

(d) that the insolvent has contracted any debt provable under this Act without having at the time of contracting it any reasonable or probable ground of expectation (the burden of proving which shall lie on him) that he would be able to pay it;

(e) that the insolvent has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities;

(f) that the insolvent has brought on, or contributed to, his insolvency by rash and hazardous speculations, or by unjustifiable extravagance in living or by gambling, or by culpable neglect to his business affairs;

(g) that the insolvent has, within three months preceding the date of the presentation of the petition, when unable to pay his debts as they became due, given an undue preference to any of his creditors;

(h) that the insolvent has on any previous occasion been adjudged an insolvent or made a composition or arrangement with his creditors;

(i) that the insolvent has concealed or removed his property or any part thereof, or has been guilty of any other fraud or fraudulent breach of trust.

(2) For the purposes of this section, the report of the receiver shall be deemed to be evidence; and the Court may presume the correctness of any statement contained therein.

(3) the powers of suspending, and of attaching conditions to, an insolvent's discharge may be exercised concurrently.

44. **Adjudication to be annulled on failure to apply for discharge.** (1) If the debtor does not appear on the day fixed for hearing his application for discharge or on such subsequent day as the Court may direct, or if the debtor does not apply for an order of discharge within the period specified by the Court, the Court may annul the order of adjudication or make such other order as it may think fit, and if the adjudication is so annulled, the provisions of Section 38 shall apply.

(2) Where a debtor has been released from custody under the provisions of this Act and the order of adjudication is annulled under sub-section (1), the Court may, if it thinks fit, re-commit the debtor to his former custody, and the officer in charge of the prison to whose custody such debtor is so recommitted shall receive such debtor into his custody according to such re-commitment, and thereupon all processes which were in force against the person of such debtor at the time of such release as aforesaid shall be deemed to be still in force against him as if no order of adjudication had been made.

45. **Effect of order of discharge.** (1) An order of discharge shall not release the insolvent from—

(a) any debt due to the Government;

(b) any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party.

(c) any debt or liability in respect of which he has obtained forbearanc by any fraud to which he was a party; or

(d) any liability under an order for maintenance made under Section 488 of the Code of Criminal Procedure, 1898.

(2) Save as otherwise provided by sub-section (1), an order of discharge shall release the insolvent from all debts provable under this Act.

(3) An order of discharge shall not release any person who, at the date of the presentation of the petition, was a partner or co-trustee with the insolvent, or was jointly bound or had made any joint contract with him or any person who was surety for him.

PART III.

ADMINISTRATION OF PROPERTY.

METHOD OF PROOF OF DEBTS.

46. **Debt payable at a future time.** A creditor may prove for a debt not payable when the debtor is adjudged an insolvent as if it were payable presently, and may receive dividents equally with the other creditors, deducting therefrom only a rebate of interest at the rate of six per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

47. **Mutual dealings and set off.** Where there have been mutual dealings between an insolvent and a creditor proving or claiming to prove a debt under this Act, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively.

48. **Secured creditors.** (1) Where a secured creditor realises his security he may prove for the balance due to him, after deducting the net amount realised.

(2) Where a secured creditor relinquishes his security for the general benifit of the creditors, he may prove for his whole debt.

(3) Where a secured creditor does not either realise or relinquish his security, he shall, before being entitled to have his debt entered in the Schedule, state in his proof the particulars of his security, and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

(4) Where a security is so valued, the Court may at any time before realisation redeem it on payment to the creditor of the assessed value.

(5) Where a creditor, after having valued his security, subsequently realises it, the net amount realised shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all respects as an amended valuation made by the creditor.

(6) Where a secured creditor does not comply with the provisions or this section, he shall be excluded from all share in any dividend.

49. **Interest.** (1) On any debt or sum certain whereon interest is not reserved or agreed for, and which is overdue when the debtor is adjudged an insolvent, and which is provable under this Act, the creditor may prove for interest at a rate not exceeding six per centum per annum,—

(*a*) if the debt or sum is payable by virtue of a written instrument at a certain time, from the time when such debt or sum was payable to the date of such adjudication, or,

(*b*) if the debt or sum is payable otherwise, from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment to the date of such adjudication.

(2) Where a debt which has been proved under this Act includes interest or any pecuniary consideration in lieu of interest, the interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding six per centum per annum, without prejudice to the right of a creditor to receive out of the debtor's estate any higher rate of interest to which he may be entitled after all the debts proved have been paid in full.

50. **Mode of proof.** (1) A debt may be proved under this Act by delivering, or sending by post in a registered letter, to the Court an affidavit verifying the debt.

(2) The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers (if any) by which the same can be substantiated. The court may at any time call for the production of the vouchers.

51. **Disallowance and reduction of entries in schedule.** (1) Where the receiver thinks that a debt has been improperly entered in the schedule, the Court may, on the application of the receiver and after notice to the creditor, and such inquiry (if any) as the Court thinks necessary, expunge such entry or reduce the amount of the debt.

(2) The Court may also, after like inquiry, expunge an entry or reduce the amount of a debt upon the application of a creditor where no receiver has been appointed, or where the receiver declines to interfere in the matter or, in the case of a composition or scheme, upon the application of the debtor.

EFFECT OF INSOLVENCY ON ANTECEDENT TRANSACTIONS.

52. **Restriction of rights of creditor under execution.** (1) Where execution of a decree has issued against the property of a debtor, no person shall be entitled to the benefit of the execution against the receiver except in respect of assets realised in the course of the execution by sale or otherwise before the date of the admission of the petition.

(2) Nothing in this section shall affect the right of a secured creditor in respect of the property against which the decree is executed.

(3) A person who in good faith purchases the property of a debtor under a sale in execution shall in all cases acquire a good title to it against the receiver.

53. **Duties of Court executing decree as to property taken in execution.** Where execution of a decree has issued against any property of a debtor which is saleable in execution and before the sale thereof notice is given to the Court, executing the decree that an insolvency petition by or against the debtor has been admitted, the Court shall, on application, direct the property, if in the possession of the Court, to be delivered to the receiver, but the costs of the suit in which the decree was made and of the execution shall be a first charge on the property so delivered, and the receiver may sell the property or an adequate part thereof for the purpose of satisfying the charge.

54. **Avoidance of voluntary transfer.** Any transfer of property not being a transfer made before and in consideration of marriage or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration shall, if the transferor is adjudged insolvent on a petition presented within two years after the date of the transfer, be voidable as against the receiver and may be annulled by the Court.

55. **Avoidance of preference in certain cases.** (1) Every transfer of property, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, with a view of giving that creditor a preference over the other creditors, shall, if such person is adjudged insolvent on a petition presented within three months after the date thereof, be deemed fraudulent and void as against the receiver and shall be annulled by the Court.

(2) This section shall not affect the rights of any person who in good faith and for valuable consideration has acquired a title through or under a creditor of the insolvent.

56. **By whom petitions for annulment may be made.** A petition for the annulment of any transfer under Section 54 or of any transfer, payment, obligation or judicial proceeding under Section 55 may be made by the receiver or, with the leave of the

Court, by any creditor who has proved his debt and who satisfies the Court that the receiver has been requested and has refused to make such petition.

57. **Protection of bonafide trancactions.** Subject to the foregoing provisions of this Act with respect to the effect of insolvency on an execution, and with respect to the avoidance of certain transfers and preferences, nothing in this Act shall invalidate in the case of an insolvency—

(a) any payment by the insolvent to any of his creditors;

(b) any payment or delivery to the insolvent;

(c) any transfer by the insolvent for valuable consideration; or

(d) any contract or dealing by or with the insolvent for valuable consideration:

Provided that any such transaction takes place before the date of the order of adjudication, and that the person with whom such transaction takes place has not at the time, notice of the presentation of any insolvency petition by or against the debtor.

REALISATION OF PROPERTY.

58. **Appointment of receiver.** (1) The Court may, at the time of the order of adjudication, or at any time afterwards, appoint a receiver for the property of the insolvent, and such property shall thereupon vest in such receiver.

(2) Subject to such conditions as may be prescribed, the Court may—

(a) require the receiver to give such security as it thinks fit duly to account for what he shall receive in respect of the property; and

(b) by general or special order, fix the amount to be paid as remuneration for the services of the receiver out of the assets of the insolvent.

(3) Where the Court appoints a receiver, it may remove the person in whose possession or custody any such property as aforesaid is from the possession or custody thereof:

Provided that nothing in this section shall be deemed to authorise the Court to remove from the possession or custody or property any person whom the insolvent has not a present right so to remove.

(4) Where a receiver appointed under this section—

(a) fails to submit his accounts at such periods and in such form as the Court directs; or

(b) fails to pay the balance due from him thereon as the Court directs; or

(c) occasions loss to the property by his wilful default or gross negligence;

the Court may direct his property to be attached and sold, and may apply the proceeds to make good any balance found to be due from him or any loss so occasioned by him.

(5) The provisions of this section shall apply, so far as may be, to interim receivers appointed under section 20.

59. **Power to appoint Official Receivers.** (1) The Government may appoint such persons as it thinks fit (to be called 'Official Receivers') to be receivers under this Act within such local limits as it may prescribe.

(2) Where any Official Receiver has been so appointed for the local limits of the jurisdiction of any Court having jurisdiction under this Act, he shall be the receiver for the purpose of every order appointing a receiver or an interim receiver issued by any such Court, unless the Court for special reasons otherwise direct.

(3) Any sum payable under clause (b) of sub-section (2) of section 58 in respect of the services of an Official Receiver shall be credited to such fund as the Government may direct.

(4) Every Official Receiver shall receive such remuneration out of the said fund or otherwise as the Government may fix in this behalf, and no remuneration whatever beyond that so fixed shall be received by the Official Receiver as such.

60. **Power of Court if no receiver appointed.** Where no receiver is appointed, the court shall have all the rights of and may exercise all the powers conferred on, a receiver under this Act.

61. **Duties and powers of receiver.** Subject to the provisions of this Act, and such other provisions as may be prescribed, the receiver shall, with all convenient speed, realise the property of the debtor and distribute dividends among the creditors entitled thereto and for that purpose may—

(a) sell all or any part of the property of the insolvent;

(b) give receipts for any money received by him and may, by leave of the Court, do all or any of the following things, namely: —

(c) carry on the business of the insolvent so far as may be necessary for the beneficial winding up of the same;

(d) institute, defend or continue any suit or other legal proceeding relating to the property of the insolvent;

(e) employ a pleader or other agent to take any proceedings or do any business which may be sanctioned by the Court;

(f) accept as the consideration for the sale of any property of the insolvent a sum of money payable at a future time subject to such stipulations as to security and otherwise as the Court thinks fit;

(g) mortgage or pledge any part of the property of the insolvent for the purpose of raising money for the payment of his debts;

(h) refer any dispute to arbitration, and compromise all debts, claims and liabilities, on such terms as may be agreed upon; and

(i) divide in its existing form amongst the creditors, according to its estimated value, any property which, from its peculiar nature or other special circumstances, cannot readily or advantageously be sold.

62. **Power to require information regarding insolvent's property.** (1) The Court, if specially empowered in this behalf by an order of the Government, or any officer of the Court so empowered by a like order, may, on the application of the receiver or any creditor who has proved his debt, at any time after an order of adjudication has been made, summon before it in the prescribed manner any person known or suspected to have in his possession any property belonging to the insolvent, or supposed to be indebted to the insolvent, or any person whom the Court or such officer, as the case may be, may deem capable of giving information respecting the insolvent or his dealings or property, and the Court or such officer may require any such person to produce any documents in his custody or power relating to the insolvent or to his dealings or property.

(2) If any person so summoned, after having been tendered a reasonable sum, refuses to come before the Court or such officer at the time appointed, or refuses to produce any such document, having no lawful impediment made known to and allowed by the Court or such officer, the Court or such officer may, by warrant, cause him to be apprehended and brought up for examination.

(3) The Court or such officer may examine any person so brought before it or him concerning the insolvent, his dealings or property, and such person may be represented by a legal practitioner.

63. **Special provisions in regard to immovable property.** (1) In any local area in which a declaration has been made under Section 68 of the Code of Civil Procedure, 1908, and is in force, no sale of immovable property paying revenue to the Government or held or let for agricultural purposes shall be made by the receiver; but, after the other property of the insolvent has been realised, the Court shall ascertain—

(*a*) the amount required to satisfy the debts proved under this Act after deducting the moneys already received;

(*b*) the immovable property of the insolvent remaining unsold; and

(*c*) the incumbrances (if any) existing thereon; and shall forward a statement to the collector containing the particulars aforesaid; and thereupon the Collector shall proceed to raise the amount so required by the exercise of such of the powers conferred on him by paragraphs 2 to 10 of the Third Schedule to the said Code as he thinks fit, and subject to the

provisions of those paragraphs so far as they are applicable, and shall hold at the disposal of the Court all sums that may come to his hands, by the exercise of such powers.

(2) Nothing in this Act shall be deemed to affect any provisions of any enactment for the time being in force prohibiting or restricting the execution of decrees or orders against immovable property; and any such provisions shall be deemed to apply to the enforcement of an order of adjudication made under this Act as if it were such a decree or order.

DISTRIBUTION OF PROPERTY.

64. **Priority of debts.** (1) In the distribution of the property of the insolvent, there shall be paid in priority to all other debts—

(*a*) all debts due to the Government or to any local authority; and

(*b*) all salary or wages, not exceeding twenty rupees in all, of any clerk, servant, or labourer in respect of services rendered to the insolvent during four months before the date of the presentation of the petition.

(2) The debts specified in sub-section (1) shall rank equally between themselves, and shall be paid in full, unless the property of the insolvent is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Subject to the retention of such sums as may be necessary for the expenses of administration or otherwise, the debts specified in sub-section (1) shall be discharged forthwith in so far as the property of the insolvent is sufficient to meet them.

(4) In the case of partners, the partnership property shall be applicable in the first instance in the payment of the partnership debts and the separate property of each partner shall be applicable in the first instance in payment of his separate debts. Where there is a surplus of the separate property of the partners, it shall be dealt with as part of the partnership property; and where there is a surplus of the partnership property, it shall be dealt with as part of the respective separate property in proportion to the rights and interests of each partner in the partnership property.

(5) Subject to the provisions of this Act, all debts entered in the schedule shall be paid rateably according to the amounts of such debts respectively and without any preference.

(6) Where there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date on which the debtor is adjudged an insolvent at the rate of six per centum per annum on all debts entered in the Schedule.

65. **Calculation of dividends.** (1) In the calculation of dividends, the receiver shall retain in his hands sufficient assets to meet—

(*a*) debts provable under this Act and appearing, from the insolvent's statements or otherwise, to be due to persons resident in places so distant that in the ordinary course of communication they have not had sufficient time to tender their proofs;

(*b*) debts provable under this Act, the subject of claims not yet determined;

(*c*) disputed proofs or claims; and

(*d*) the expenses necessary for the administration of the estate or otherwise.

(2) Subject to the provisions of sub-section (1), all money in hand shall be distributed as dividends.

66. **Right of creditor who has not proved debt before declaration of a dividend.** Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid, out of any money for the time being in the hands of the receiver, any dividend or dividends which he may have failed to receive before that money is applied to the payment of any future dividend or dividends; but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

67. **Final dividend.** When the receiver has realised all the property of the insolvent or so much thereof as can, in the opinion of the Court, be realised without needlessly protracting the receivership, he shall declare a final dividend but before so doing, he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified but not proved, that if they do not prove their claims within the time limited by the notice, he will proceed to make a final dividend without regard to their claims. After the expiration of the time so limited, or if the Court, on application by any such claimant, grants him further time, for establishing his claim, then on the expiration of such further time the property of the insolvent shall be divided among the creditors entered in the schedule without regard to the claims of any other persons.

68. **No suit for dividend.** No suit for a dividend shall lie against the receiver; but where the receiver refuses to pay any dividend, the Court may, on the application of any creditor who if entered in the schedule, order him to pay it, and also to pay out of his own money interest thereon for the time that it is withheld, and the costs of the application.

69. **Management by and allowance to insolvent.** (1) The Court may appoint the insolvent himself to superintend the management of the property of the insolvent or of any part thereof, or to carry on the trade (if any) of the insolvent for the

benefit of the creditors, and in any other respect to aid in administering the property in such manner and on such terms as the Court may direct.

(2) The Court may, from time to time, make such allowance as it may think just to the insolvent out of his property for the support of himself and his family, or in consideration of his services if he is engaged in winding up his estate; but any such allowance may, at any time, be varied or determined by the Court.

70. **Right of insolvent to surplus.** The insolvent shall be entitled to any surplus remaining after payment in full of his creditors with interest as provided by this Act, and of the expenses of the proceedings taken thereunder.

71. (1) **Committee of inspection.** The Court may, if it thinks fit, authorise the creditors who have proved their debts to appoint a committee of inspection for the purpose of superintending the administration of the insolvent's property by the Receiver.

(2) The persons appointed to a Committee of inspection shall be creditors who have proved their debts or persons holding general powers-of-attorney from such creditors.

(3) The Committee of inspection shall have such powers of control over the proceedings of the receiver as may be prescribed.

APPEAL TO COURT AGAINST RECEIVER.

72. **Appeal to Court againt Receiver.** If the insolvent or any of the creditors or any other person is aggrieved by any act or decision of the Receiver, he may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just:

Provided that no application under this section shall be entertained after the expiration of twentyone days from the date of the act or decision complained of.

PART IV.

PENALTIES.

73. **Offences by debtors.** If a debtor, whether before or after the making of an order of adjudication,—

(*a*) wilfully fails to perform the duties imposed on him by Section 22 or to deliver up possession of any part of his property which is divisible among his creditors under this Act, and which is for the time being in his possession or under his control to the Court or to any person authorised by the Court to take possession of it, or

(*b*) fraudulently with intent to conceal the state of his affairs or to defeat the objects of this Act,—

(i) has destroyed or otherwise wilfully prevented or purposely withheld the production of any document relating to such of his affairs as are subject to investigation under this Act, or

(ii) has kept or caused to be kept false books, or

(iii) has made false entries in or withheld entries from or wilfully altered or falsified any document relating to such of his affairs as are subject to investigation under this Act, or

(c) fraudulently with intent to diminish the sum to be divided among his creditors or to give an undue preference to any of his creditors,—

(i) has discharged or concealed any debt due to or from him, or

(ii) has made away with, charged, mortgaged or concealed any part of his property of any kind whatsoever,
he shall be punishable on conviction with imprisonment which may extend to one year.

74. **Procedure on charge under Section 73.** Where the Court is satisfied, after such preliminary inquiry, if any, as it thinks necessary, that there is ground for inquiring into any offence referred to in Section 73 and appearing to have bean committed by the insolvent, the Court may record a finding to that effect and make a complaint of the offence in writing to a Magistrate of the First class having jurisdiction, and such Magistrate shall deal with such complaint in the manner laid down in the Code of Criminal Procedure, 1898.

75. **Criminal liability after discharge or composition.** Where an insolvent has been guilty of any of the offences specified in Section 73 he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge or that a composition or scheme of arrangement has been accepted or approved.

76. **Undischarged insolvent obtaining credit.** (1) An undischarged insolvent obtaining credit to the extent of fifty rupees or upwards from any person without informing such person that he is an undischarged insolvent shall, on conviction by a Magistrate, be punishable with imprisonment for a term which may extend to six months, or with fine or with both.

(2) Where the Court has reason to believe that an undischarged insolvent has committed the offence referred in sub-section (1), the Court, after making any preliminary inquiry that may be necessary, may send the case for trial to the nearest Magistrate of the First class, and may send the accused in custody or take sufficient security for his appearance before such Magistrate ; and may bind over any person to appear and give evidence on such trial:

77. **Disqualifications of insolvent.** (1) Where a debtor is adjudged or re-adjudged insolvent under this Act, he shall, subject to the provisions of this section, be disqualified from being appointed or acting as a judicial officer.

(2) The disqualification which an insolvent is subject to under this section shall be removed, and shall cease if—

(a) the order of adjudication is annulled under Section 36, or

(b) he obtains from the Court an order of discharge whether absolute or conditional, with a certificate that his insolvency was caused by misfortune without any misconduct on his part.

(3) The Court may grant or refuse such certificate as it thinks fit, but any order of refusal shall be subject to appeal.

PART V.

Summary Administration.

78. **Summary administration.** When a petition is presented by or against a debtor, if the Court is satisfied by affidavit or otherwise that the property of the debtor is not likely to exceed in value five hundred rupees, the Court may make an order that the debtor's estate be administered in a summary manner, and thereupon the provisions of this Act shall be subject to the following modifications namely:—

(i) unless the Court otherwise directs, no notice required under this Act shall be published in the Gazette;

(ii) on the admission of a petition by a debtor, the property of the debtor shall vest in the Court as a receiver;

(iii) at the hearing of the petition, the Court shall inquire into the debts and assets of the debtor and determine the same by order in writing, and it shall not be necessary to frame a schedule under the provisions of Section 34;

(iv) the property of the debtor shall be realised with all reasonable despatch and thereafter, when practicable, distributed in a single dividend;

(v) the debtor shall apply for his discharge within six months from the date of adjudication; and

(vi) such other modifications as may be prescribed with the view of saving expense and simplifying procedure:

Provided that the Court may at any time direct that the ordinary procedure provided for in this Act shall be followed in regard to the debtor's estate, and thereafter the Act shall have effect accordingly.

PART VI

Appeals.

79. **Appeals.** (1) The debtor, any creditor, the receiver or any other person aggrieved by a decision come to or an order made in the exercise of insolvency jurisdiction by a Court subordinate to a District Court may appeal to the District Court, and the order of the District Court upon such appeal shall be final:

Provided that the High Court, for the purpose of satisfying itself that an order made in any appeal decided by the District Court was according to law, may call for the case and pass sucg order with respect thereto as it thinks fit:

Provided, further, that any such person aggrieved by a decision of the District Court on appeal from a decision of a subordinate Court under Section 4 may appeal to the High Court on any of the grounds mentioned in sub-section (1) of Section 100 of the Code of Civil Procedure, 1908.

(2) Any such person aggrieved by any such decision or order of a District Court as is specified in Schedule I, come to or made otherwise than in appeal from an order made by a subordinate Court, may appeal to the High Court.

(3) Any such person aggrieved by any other order made by a District Court otherwise than in appeal from an order made by a subordinate Court may appeal to the High Court by leave of the District Court or of the High Court.

(4) The periods of limitation for appeals to the District Court and to the High Court under this section shall be thirty days and ninety days, respectively.

PART VII.

MISCELLANEOUS.

80. **Costs**. The cost of any proceeding under this Act, including the costs of maintaining a debtor in the civil prison, shall, subject to any rules made under this Act, be in the discretion of the Court in which the proceeding is had.

81. **Courts to be auxiliary to each other**. All Courts having jurisdiction in insolvency and officers of such Courts, respectively, shall severally act in aid of and be auxiliary to each other in all matters of insolvency, and an order of a Court seeking aid with a request to another of the said Courts shall be deemed sufficient to enable the latter Court to exercise, in regard to the matters directed by the order, such jurisdiction as either of such Courts could exercise in regard to similar matters within their respective jurisdictions.

82. **Limitation**. (1) The provisions of Sections 5 and 12 of the Indian Limitation Act, 1908, shall apply to appeals and applications under this Act, and for the purpose of the said section 12, a decision under Section 4 shall be deemed to be a decree.

(2) Where an order of adjudication has been annulled under this Act, in computing the period of limitation prescribed for any suit or application for the execution of a decree (other than a suit or application in respect of which the leave of the Court was obtained under sub-section (2) of Section 28 which might have been brought or made but for the making of an order of adjudication under this Act, the period from the date of the order of adjudication to the date of the order of annulment shall be excluded.

Provided that nothing in this section shall apply to a suit or application in respect of a debt provable but not proved under this Act.

83. **Power to make rules.** (1) The High Court may, with the previous sanction of the Government, make rules for carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide—

(a) for the appointment and remuneration of receivers (other than Official Receivers), the audit of the accounts of all receivers and the costs of such audit;

(b) for meetings of creditors;

(c) for the procedure to be followed where the debtor is a firm;

(d) for the procedure to be followed in the case of estates to be administered in a summary manner; and

(e) for any matter which is to be or may be prescribed.

(3) All rules made under this section shall be published in the Gazette and shall, on such publication, have effect as if enacted in this Act.

84. **Delegation of Powers to Official Receivers.** (1) The High Court, with the like sanction, may from time to time direct that, in any matters in respect of which jurisdiction is given to the Court by this Act, the Official Receiver shall, subject to the directions of the Court, have all or any of the following powers, namely:—

(a) to frame schedules and to admit or reject proofs of creditors;

(b) to make interim orders in any case of urgency; and

(c) to hear and determine any unopposed or exparte application.

(2) Subject to the appeal to the Court provided for by section 72, any order made or act done by the Official Receiver in the exercise of the said powers shall be deemed the order or act of the Court.

85. **Power of Government to bar application of certain provisions to certain Courts.** Government may, by notification in the Gazette declare that any of the provisions of this Act specified in Schedule II shall not apply to insolvency proceedings in any Court or Courts having jurisdiction under this Act.

86. The Travancore Insolvency Act, 1108 (Act, VIII of 1108) and the Cochin Insolvency Act VII of 1098 are hereby repealed.

SCHEDULE I.

(See Section 79 (2))

DECISION AND ORDERS FROM WHICH AN APPEAL LIES TO THE HIGH COURT UNDER SECTION 79 (2)

Section.	*Nature of decision or order.*
4	Decision of questions of title, priority, etc. arising in insolvency
25	Order dismissing a petition
26	Order awarding compensation
27	Order of adjudication
34	Orders regarding entries in the Schedule
36	Order annulling adjudication
38	Order declaring the conditions on which the debtor's property shall revert to him on annulment of adjudication
42	Order on application for discharge
51	Order disallowing or reducing entries in the Schedule
54	Order annulling a voluntary transfer
55	Decision that a transfer of property is a preference in favour of a creditor

SCHEDULE II.

(*See Section 85*).

PROVISIONS OF THE ACT APPLICATION OF WHICH MAY BE BARRED BY GOVERNMENT.

Provisions of the Act.	*Subject.*
Section	
26	Award of compensation.
28 Sub-section (3)	Reputed property of an insolvent.
35	Debts provable under the Act.
39, 40, 41	Compositions and schemes of arrangement.
43 Sub-sections (1) and (2)	Obligation to refuse absolute discharge.
46, 47, 48, 49, 50, 51	Method of proof of debts.
52, 53, 54, 55, 57	Effect of insolvency on antecedent ransactions.
64 (except clause (a) of sub-section (1) and sub-section (4)	Priority of debts.
65, 66, 67, 68	Dividends.
69	Management by and allowance to insolvent.
76	Penalty for obtaining of credit by undischarged insolvent.

STATEMENT OF OBJECTS AND REASONS.

The law relating to insolvency is now contained in the Travancore Insolvency Act, 1108, which is applicable to the Travancore area, and in the Cochin Insolvency Act, 1098, applicable to the Cochin area of the State. It is necessary to have a uniform law on the subject applicable to the whole State. Hence the Bill. The Bill closely follows the existing laws on the subject.

A. THANU PILLAI.

FINANCIAL MEMORANDUM.

Clause 59 (1) of the Bill provides for the appointment of Official Receivers. Clause 58 (2) (b) empowers the Court to fix the amount of remuneration for the services of the Receiver out of the assets of the insolvent. Any sum payable under that clause shall be credited to such fund as the Government may direct (Clause 59 (3). According to clause 59 (4) the Official Receiver is entitled to remuneration from the said fund or otherwise. Though the remuneration payable to the Receivers is realisable from the assets of the insolvent, in the first instance it is payable from the Consolidated Fund of the State. An estimate of the annual expenditure on this account is given below:—

9 Official Receivers on an allowance of Rs. 100 p. m.	..	Rs.	10,800
9 Clerks on Rs. 30-45 p. m.	..	Rs.	4,455
9 Peons on Rs. 20 p. m.	..	Rs.	2,160
Contingent expenses at Rs. 60 for each office per annum	..	Rs.	540
Total	..	Rs.	17,955